

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

JOHN DOE,

Plaintiff,

v.

HOLY SEE (State of Vatican City), DIOCESE
OF ROCHESTER, in Rochester, New York,
MATTHEW H. CLARK, Archbishop of Rochester,
and ST. JOHN's the EVANGELIST CHURCH,

Defendants.

COMPLAINT

Index No.:

FILED
2002 DEC 23 A 8:53
MONROE COUNTY CLERK

PRELIMINARY STATEMENT

This is an action arising out sexual molestation and abuse of the plaintiff by Al Cason, an ordained Roman Catholic priest over a period of several years. The causes of action against the defendants are for breach of fiduciary duty, aiding and abetting the commission of criminal sexual misconduct, and a conspiracy among the defendants to protect predatory priests such as Al Cason and other clergy, enabling them to evade criminal or civil prosecution in liability. Plaintiff further alleges that the defendants were negligent and grossly negligent in the placement, supervision, and retention of Cason, and aided and abetted in the concealment of criminal sexual misconduct which proximately caused the injuries sustained herein.

PARTIES

1. Plaintiff John Doe is an adult male who is a citizen of and has his residence in the State of New York. Plaintiff was a minor at the time of the criminal sexual misconduct alleged herein.
2. Defendant Holy See (State of Vatican City) is a foreign country, and is the ecclesiastical, governmental, and administrative capital of the Roman Catholic Church. Defendant Holy See is the

composite of the authority, jurisdiction, and sovereignty vested in the Pope and his delegated advisors to direct the world-wide Roman Catholic Church, and has unqualified power over the Catholic Church including each and every individual and section of the church, pursuant to which it (a) directs, supervises, supports, promotes, and engages in providing religious and pastoral guidance, education, and counseling services to Roman Catholics world-wide in exchange for all or a portion of the revenues derived from its members for these services; (b) engages in these activities through its agents, cardinals, bishops, and clergy, including religious order priests, brothers and sisters, who engage in pastoral work under the authority of its bishop; (c) seeks and is supported through the contributions of the faithful which are received through donations from the dioceses; (d) promotes and safeguards the morals and standards of conduct of the clergy of the Catholic Church, which it does by and through its agents and instrumentalities, including the diocese of Rochester and St. John's the Evangelist Church, both delegated by the Pope and acting on his behalf; (e) creates, divides, and re-aligns dioceses, archdioceses, and ecclesiastical provinces; (f) gives final approval to the creation, division, or suppression of provinces of religious orders; (g) promotes the sacred liturgy, directs and coordinates the spreading of its faith and other things necessary to promote the faith; (h) creates, appoints, assigns, and re-assigns bishops, superiors of religious orders, and through the bishops and superiors of religious orders has the power to directly assign and remove individual clergy; (i) examines and is responsible for the work and discipline and all those things which concern bishops, superiors of religious orders, priests, and deacons for the religious clergy, and, in furtherance of this duty requires bishops to file a report, on a regular basis, outlining the status of, and any problems with, clergy; (j) promulgates and enforces the laws and regulations regarding the education, training, and standards of conduct and discipline for its members and those who serve in the governmental, administrative, judicial, educational, and pastoral workings of the Catholic Church world-wide; and (k) takes direct

responsibility for removing superiors of religious orders, bishops, archbishops, and cardinals from services and/or making them ineligible for positions of leadership in the various divisions of the Catholic Church.

3. At all times herein mentioned, defendant diocese of Rochester was and continues to be a non-profit religious corporation authorized to conduct business in the State of New York, providing pastoral services to plaintiff and his immediate family through its parishes.

4. At all times herein mentioned, defendant St. John's the Evangelist Church, located in Spencerport, New York, is and continues to be a non-profit religious corporation authorized to conduct business in the State of New York, while providing pastoral services to plaintiff and his immediate family.

STATEMENT OF FACTS

5. That Plaintiff was born on May 25, 1955, and was raised a devout Roman Catholic.

6. That in 1968 or 1969, plaintiff became an alter boy at St. John's the Evangelist Church in Spencerport, New York. That plaintiff and his family were very active in the church and in fact knew Cason prior to when Cason was placed in charge of training alter boys at St. John's.

7. That plaintiff attended mass every morning, seven days a week, going to as many as four masses on Sunday.

8. That in addition to masses, plaintiff attending weddings, funerals, and other religious events.

9. At all times herein mentioned, Al Cason was a Roman Catholic priest educated by, ordained, and remaining under the supervision and authority of defendants Holy See, the diocese of Rochester, and St. John's the Evangelist Church.

10. Upon information and belief, sometime prior to transferring him to St. John's the

Evangelist Church, defendants became aware that Al Cason engaged in inappropriate criminal sexual behavior.

11. That defendants' conduct in transferring Al Cason to St. John's the Evangelist Church was part and parcel of a conspiracy of the defendants and related entities to intentionally, recklessly, and negligently conceal the criminal conduct of its agents and employees including but not limited to the failing to report criminal conduct of its agents and/or servants, including priests, allowing and aiding them to evade criminal and/or civil prosecution and liability, as well as concealing defendants' own culpability for the conduct complained of herein.

12. That defendants transfer of Al Cason to a position where he was responsible for the education of young Catholic males in training them to function as altar boys was part of the defendants' scheme to protect predatory priests such as Cason and other clergy from criminal prosecution, as well as to maintain or increase charitable contributions, avoid public scandal, and avoid civil liability for their own conduct.

13. That by transferring Cason to a position where he was able to exercise moral and spiritual leadership over young Catholic males, knowing the reverence all parishioners would have for Cason by virtue of his being an ordained Roman Catholic priest, defendants aided and abetted the criminal conduct described below, and further aided and abetted the concealment of such conduct for reasons set forth herein.

14. That plaintiff and his family were unaware of Cason's prior predatory history; and, therefore, considered Cason to be a fine priest, and even held Cason in such high esteem that any attention shown by Cason to plaintiff was considered an honor.

15. That plaintiff's mother allowed plaintiff to go on numerous overnight trips with Cason, unable to even fathom the possibility that a Roman Catholic priest was anything but honest and pure,

holding all defendants in such reverence that it would be sinful to harbor any beliefs that a priest could be guilty of or even capable of the wrongdoing described herein.

16. That sometime around the period plaintiff became an alter boy Cason began sexually abusing him beginning with tickling and then fondling the plaintiffs genitals. This behavior went on for approximately one year during which plaintiff realized that whenever he went anywhere with Cason or was within his vicinity there would be some touching.

17. After approximately one year Cason took plaintiff to a drive-in movie in which Zane Grey was playing and approximately half way through the movie began tickling the plaintiff and began placing his hand on plaintiff's penis , choking the same and telling the plaintiff in substance, " this is o.k., a priest would not do anything wrong, you're my favorite, I want you to be my alter boy, and this will get you closer to God ", as well as similar types of remarks.

18. At the time of the aforesaid incident plaintiff was eleven or twelve years old and it was the first time he had any type of sexual experience although the subject of sex was never discussed.

19. The next incident with Cason occurred when they were on an overnight camping trip and Cason told the plaintiff it is too hot a night for clothes, stripped all his clothes and began fondling the plaintiff and attempted to penetrate the plaintiff, which plaintiff resisted. Cason spent some half hour attempting to convince plaintiff penetration should be committed after which he simply masturbated and the incident came to an end.

20. That in the course of the aforesaid incident Cason again told plaintiff that it was " very o.k. ", " that it was natural and nothing bad ", and that it would be "our secret ". That plaintiff felt horrified through the course of this experience, did not in any respect feel aroused, but found himself believing Cason's statements. The sexual abuse continued until the plaintiff reached seventh grade at which time he never returned to St. John's.

21. That plaintiff felt a strong sense of helplessness, shame, degradation, guilt and repression as a result of Cason's abuse as aforesaid.

22. That plaintiff experienced a profound spiritual loss and sensed that there was no one he could turn to and the same resulted in the plaintiff becoming involved in substance abuse.

23. That plaintiff became an alcoholic and throughout his life ,from time to time was treated for depression, and was unable to maintain any meaningful relationships for any period of time.

24. That plaintiff for the past five or six years has lost interest in sexual relations altogether and is presently celibate.

AS AND FOR A FIRST CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

25. Plaintiff realleges each and every allegation in paragraphs "1" through "24" as though fully set forth herein.

26. That by holding itself out as a religious educational institution, defendant diocese of Rochester, assumed the duty of ensuring persons ordained as Roman Catholic priests had the requisite intellectual, moral, and spiritual qualities to function as a mentor and spiritual father.

27. That by maintaining a program of instructions for altar boys at St. John's the Evangelist Church including plaintiff herein, defendants entered into a fiduciary relationship with the minor plaintiff.

28. That in light of plaintiff's age, this duty included ensuring plaintiff received proper educational and spiritual instruction as well as ensuring plaintiff was provided a healthy, safe environment by carrying out such instructions.

29. That while plaintiff may have known he had a viable cause of action against Cason,

neither he nor his mother were aware of a cause of action against the remaining defendants for negligence in placing Cason at St. John's the Evangelist Church, in retaining and supervising Cason, and for failing to warn plaintiff of Cason's dangerous propensity to molest young males; and for placing him in a position where he would have ready access to young males and utilize his superior position.

30. That this includes the failure of employees or agents at St. John's the Evangelist Church to monitor Cason's activities at the rectory; which failure is reflected in the fact that Cason, over a period of several years openly and notoriously had male minors serve and prepare alcoholic beverages for him while at the rectory, at an age when they are entering puberty or even younger.

31. Upon information and belief, defendant, diocese of Rochester, knew it had a duty to obtain disclosure information relating to the sexual misconduct of Cason and that it had the duty to use reasonable care in placing Cason in a position where he would not have any access to young males, and to properly monitor his conduct, and that plaintiff had a viable cause of action against said Diocese for failing to fulfill the aforesaid duties.

32. Upon information and belief, defendant, Holy See, knew it had a duty to obtain disclosure information relating to the sexual misconduct of Cason, that it had the duty to use reasonable care in placing Cason in a position where he would not have any access to young males, and to properly monitor his conduct, and that plaintiff had a viable cause of action against Holy See for failing to fulfill the aforesaid duties.

33. That sometime prior to 1968, defendant, diocese of Rochester knew it was reasonably foreseeable that Cason would sometime in the future commit sexual misconduct with young males, and know plaintiff had viable causes of action as a result of the same.

34. That defendants having actual knowledge of the aforesaid wrong-doing induced plaintiff

and his family to postpone bringing any suit against them.

35. That defendants fraudulently concealed from plaintiff and his family causes of action unknown to them including but not limited to breaching their fiduciary duty to plaintiff by placing and retaining Cason at St. John's the Evangelist Church, and failing to properly supervise his activities at St. John's the Evangelist Church.

36. That in addition to the fraudulent concealment set forth above, defendants used moral arguments to manipulate plaintiff and his family to convince them not to press criminal charges or pursue any civil causes of action as set forth below.

37. That defendants knew plaintiff and his family were devout Catholics who were not only close to the church, but involved in the day to day life of their church.

38. That defendants knew they and especially Cason held an exalted position in their lives and that they were loyal and obedient to the church and its officials.

39. That defendants preyed on plaintiff's faith in the church and especially its teachings so he would not question the wisdom or decisions of the Holy See and its agents, and used their power to induce plaintiff and his family to not press any criminal charges, or to otherwise harm the church either by pursuing the plaintiff's civil cause of action or publicly disclosing the deviant sexual behavior of Cason.

40. That defendant's imposition of duress employed upon plaintiff and his family to induce them to postpone or forfeit any cause of action through the profound spiritual impact they exercised was of the same nature Cason used to induce plaintiff to maintain the plaintiff's submission and silence concerning the deviant acts Cason carried out between 1968-1969.

AS AND FOR A SECOND AND SEPARATE CAUSE OF ACTION
FRAUD AND CONSPIRACY TO COMMIT FRAUD

41. Plaintiff realleges each and every allegation in paragraphs "1" through "24 " as though

fully set forth herein.

42. Defendants misrepresented, concealed, or failed to disclose information relating to sexual misconduct of Cason as described herein.

43. Defendants knew that they misrepresented, concealed, or failed to disclose information relating to the sexual misconduct of Cason.

44. The fact that Cason had in the past and/or would in the future be likely to commit sexual misconduct with young males was a material fact in plaintiffs and their families' decision whether or not to allow plaintiff to continue attending St. John's the Evangelist Church.

45. Plaintiff justifiably relied upon defendants for information relating to sexual misconduct of Cason.

46. Upon information and belief, defendants, in concert with each other and with the intent to conceal and defraud, conspired and came to a meeting of the minds whereby they could misrepresent, conceal or fail to disclose information relating to the sexual misconduct of Cason. By so concealing, defendants committed at least one act in furtherance of the conspiracy.

47. As a direct result of defendants' fraud and conspiracy, plaintiff has suffered, and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; was prevented and will be prevented from performing his daily activities and obtaining the full enjoyment of life; has sustained loss of earnings and earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

AS AND FOR A THIRD AND SEPARATE CAUSE OF ACTION
NEGLIGENT RETENTION AND/OR SUPERVISION

48. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

49. Defendants, by and through its agents, servants, and employees, knew or reasonably

should have known of Cason's dangerous exploitive propensities and/or that defendant, Cason was an unfit agent.

50. Defendants had a duty to not retain defendant, Cason, given Cason's dangerous and exploitive propensities, to provide reasonable supervision of defendant, Cason, and to use reasonable care in investigating Cason.

51. Defendants negligently retained and/or failed to supervise Cason in positions of trust and authority as caretaker, teacher, Roman Catholic priest, and spiritual counselor while plaintiff was an altar boy at St. John's the Evangelist Church and Cason was able to commit the wrongful acts against plaintiff. Defendants failed to provide reasonable supervision of Cason and failed to use reasonable care in investigating Cason.

52. As a result of the above-described conduct, plaintiff has suffered, and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; was prevented and will continue to be prevented from performing his daily activities and obtaining the full enjoyment of life; has sustained loss of earning and earnings capacities; and/or have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

AS AND FOR A FOURTH AND SEPARATE CAUSE OF ACTION
NEGLIGENT FAILURE TO WARN AND/OR INSTRUCT

53. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

54. Defendants, by and through its agents, servants, and employees, knew or reasonably should have known Cason's dangerous and exploitive propensities and/or that Cason was an unfit agent.

55. Defendants had a duty to warn plaintiff and his family of Cason's dangerous and exploitive propensities.

56. Once defendants became aware of the full extent of Cason's sexual misconduct with numerous child victims, defendants had the duty to contact plaintiff and instruct him to seek medical and/or psychological assistance if plaintiff was a victim of Cason's sexual misconduct.

57. Defendants negligently failed to provide adequate warning to plaintiff and his family of Cason's dangerous propensities and unfitness.


58. As a result of the above-described conduct, plaintiff has suffered, and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; was prevented and will continue to be prevented from performing his daily activities and obtaining the full enjoyment of life; has sustained loss of earning and earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests the following relief:

1. Award plaintiff \$10,000,000.00 in compensatory damages against defendants jointly and severally.
2. Award plaintiff \$40,000,000.00 in exemplary damages.
3. Award plaintiff statutory attorney's fees, and such other and further relief as the Court deems just and proper under the circumstances, together with costs, and disbursements of this action.

Dated: December 12, 2002
Binghamton, New York


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